

out the United States as well as in other countries, and are handled and marketed by thousands of small-sized and medium-sized businesses; and

(B) the production, handling, and marketing of cut flowers and cut greens constitute a key segment of the United States horticultural industry and thus a significant part of the overall agricultural economy of the United States;

(3) handlers play a vital role in the marketing of cut flowers and cut greens in that handlers—

(A) purchase most of the cut flowers and cut greens marketed by producers;

(B) prepare the cut flowers and cut greens for retail consumption;

(C) serve as an intermediary between the source of the product and the retailer;

(D) otherwise facilitate the entry of cut flowers and cut greens into the current of domestic commerce; and

(E) add efficiencies to the market process that ensure the availability of a much greater variety of the product to retailers and consumers;

(4) it is widely recognized that it is in the public interest and important to the agricultural economy of the United States to provide an adequate, steady supply of cut flowers and cut greens at reasonable prices to the consumers of the United States;

(5)(A) cut flowers and cut greens move in interstate and foreign commerce; and

(B) cut flowers and cut greens that do not move in interstate or foreign channels of commerce but only in intrastate commerce directly affect interstate commerce in cut flowers and cut greens;

(6) the maintenance and expansion of markets in existence on December 14, 1993, and the development of new or improved markets or uses for cut flowers and cut greens, are needed to preserve and strengthen the economic viability of the domestic cut flowers and cut greens industry for the benefit of producers, handlers, retailers, and the entire floral industry;

(7) generic programs of promotion and consumer information can be effective in maintaining and developing markets for cut flowers and cut greens, and have the advantage of equally enhancing the market position for all cut flowers and cut greens;

(8) because cut flowers and cut greens producers are primarily agriculture-oriented rather than promotion-oriented, and because the floral marketing industry within the United States is comprised mainly of small-sized and medium-sized businesses, the development and implementation of an adequate and coordinated national program of generic promotion and consumer information necessary for the maintenance of markets in existence on December 14, 1993, and the development of new markets for cut flowers and cut greens have been prevented;

(9) there exist established State and commodity-specific producer-funded programs of promotion and research that are valuable efforts to expand markets for domestic producers of cut flowers and cut greens and that

will benefit from the promotion and consumer information program authorized by this chapter in that the program will enhance the market development efforts of the programs for domestic producers;

(10) an effective and coordinated method for ensuring cooperative and collective action in providing for and financing a nationwide program of generic promotion and consumer information is needed to ensure that the cut flowers and cut greens industry will be able to provide, obtain, and implement programs of promotion and consumer information necessary to maintain, expand, and develop markets for cut flowers and cut greens; and

(11) the most efficient method of financing such a nationwide program is to assess cut flowers and cut greens at the point at which the flowers and greens are sold by handlers into the retail market.

#### **(b) Policy and purpose**

It is the policy of Congress that it is in the public interest, and it is the purpose of this chapter, to authorize the establishment, through the exercise of the powers provided in this chapter, of an orderly procedure for the development and financing (through an adequate assessment on cut flowers and cut greens sold by handlers to retailers and related entities in the United States) of an effective and coordinated program of generic promotion, consumer information, and related research designed to strengthen the position of the cut flowers and cut greens industry in the marketplace and to maintain, develop, and expand markets for cut flowers and cut greens.

(Pub. L. 103-190, § 2, Dec. 14, 1993, 107 Stat. 2266.)

#### **SHORT TITLE**

Section 1(a) of Pub. L. 103-190 provided that: "This Act [enacting this chapter] may be cited as the 'Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993'."

### **§ 6802. Definitions**

As used in this chapter:

#### **(1) Consumer information**

The term "consumer information" means any action or program that provides information to consumers and other persons on appropriate uses under varied circumstances, and on the care and handling, of cut flowers or cut greens.

#### **(2) Cut flowers and cut greens**

##### **(A) In general**

##### **(i) Cut flowers**

The term "cut flowers" includes all flowers cut from growing plants that are used as fresh-cut flowers and that are produced under cover or in field operations.

##### **(ii) Cut greens**

The term "cut greens" includes all cultivated or noncultivated decorative foliage cut from growing plants that are used as fresh-cut decorative foliage (except Christmas trees) and that are produced under cover or in field operations.

**(iii) Exclusions**

The terms “cut flowers” and “cut greens” do not include a foliage plant, floral supply, or flowering plant.

**(B) Substantial portion**

In any case in which a handler packages cut flowers or cut greens with hard goods in an article (such as a gift basket or similar presentation) for sale to a retailer, the PromoFlor Council may determine, under procedures specified in the order, that the cut flowers or cut greens in the article do not constitute a substantial portion of the value of the article and that, based on the determination, the article shall not be treated as an article of cut flowers or cut greens subject to assessment under the order.

**(3) Gross sales price**

The term “gross sales price” means the total amount of the transaction in a sale of cut flowers or cut greens from a handler to a retailer or exempt handler.

**(4) Handler****(A) Qualified handler****(i) In general**

The term “qualified handler” means a person (including a cooperative) operating in the cut flowers or cut greens marketing system—

(I) that sells domestic or imported cut flowers or cut greens to retailers and exempt handlers; and

(II) whose annual sales of cut flowers and cut greens to retailers and exempt handlers are \$750,000 or more.

**(ii) Inclusions and exclusions****(I) In general**

The term “qualified handler” includes—

(aa) bouquet manufacturers (subject to paragraph (2)(B));

(bb) an auction house that clears the sale of cut flowers and cut greens to retailers and exempt handlers through a central clearinghouse; and

(cc) a distribution center that is owned or controlled by a retailer if the predominant retail business activity of the retailer is floral sales.

**(II) Transfers**

For the purpose of determining sales of cut flowers and cut greens to a retailer from a distribution center described in subclause (I)(cc), each non-sale transfer to a retailer shall be treated as a sale in an amount calculated as provided in subparagraph (C).

**(III) Transportation or delivery**

The term “qualified handler” does not include a person who only physically transports or delivers cut flowers or cut greens.

**(iii) Construction****(I) In general**

The term “qualified handler” includes an importer or producer that sells cut

flowers or cut greens that the importer or producer has imported into the United States or produced, respectively, directly to consumers and whose sales of the cut flowers and cut greens (as calculated under subparagraph (C)), together with sales of cut flowers and cut greens to retailers or exempt handlers, annually are \$750,000 or more.

**(II) Sales**

Each direct sale to a consumer by a qualified handler described in subclause (I) shall be treated as a sale to a retailer or exempt handler in an amount calculated as provided in subparagraph (C).

**(III) Definitions**

As used in this paragraph:

**(aa) Importer**

The term “importer” has the meaning provided in section 6804(b)(2)(B)(i)(I) of this title.

**(bb) Producer**

The term “producer” has the meaning provided in section 6804(b)(2)(B)(ii)(I) of this title.

**(B) Exempt handler**

The term “exempt handler” means a person who would otherwise be considered to be a qualified handler, except that the annual sales by the person of cut flowers and cut greens to retailers and other exempt handlers are less than \$750,000.

**(C) Annual sales determined****(i) In general**

Except as provided in clause (ii), for the purpose of determining the amount of annual sales of cut flowers and cut greens under subparagraphs (A) and (B), the amount of a sale shall be determined on the basis of the gross sales price of the cut flowers and cut greens sold.

**(ii) Transfers****(I) Non-sale transfers and direct sales by importers**

Subject to subclause (III), in the case of a non-sale transfer of cut flowers or cut greens from a distribution center (as described in subparagraph (A)(ii)(II)), or a direct sale to a consumer by an importer (as described in subparagraph (A)(iii)), the amount of the sale shall be equal to the sum of—

(aa) the price paid by the distribution center or importer, respectively, to acquire the cut flowers or cut greens; and

(bb) an amount determined by multiplying the acquisition price referred to in item (aa) by a uniform percentage established by an order to represent the mark-up of a wholesale handler on a sale to a retailer.

**(II) Direct sales by producers**

Subject to subclause (III), in the case of a direct sale to a consumer by a pro-

ducer (as described in subparagraph (A)(iii)), the amount of the sale shall be equal to an amount determined by multiplying the price paid by the consumer by a uniform percentage established by an order to represent the cost of producing the article and the mark-up of a wholesale handler on a sale to a retailer.

**(III) Changes in uniform percentages**

Any change in a uniform percentage referred to in subclause (I) or (II) may become effective after—

(aa) recommendation by the PromoFlor Council; and

(bb) approval by the Secretary after public notice and opportunity for comment in accordance with section 553 of title 5 and without regard to sections 556 and 557 of such title.

**(5) Order**

The term “order” means an order issued under this chapter (other than sections 6808, 6809, and 6811 of this title).

**(6) Person**

The term “person” means any individual, group of individuals, firm, partnership, corporation, joint stock company, association, society, cooperative, or other legal entity.

**(7) PromoFlor Council**

The term “PromoFlor Council” means the Fresh Cut Flowers and Fresh Cut Greens Promotion Council established under section 6804(b) of this title.

**(8) Promotion**

The term “promotion” means any action determined by the Secretary to advance the image, desirability, or marketability of cut flowers or cut greens, including paid advertising.

**(9) Research**

The term “research” means market research and studies limited to the support of advertising, market development, and other promotion efforts and consumer information efforts relating to cut flowers or cut greens, including educational activities.

**(10) Retailer**

**(A) In general**

The term “retailer” means a person (such as a retail florist, supermarket, mass market retail outlet, or other end-use seller), as described in an order, that sells cut flowers or cut greens to consumers, and a distribution center described in subparagraph (B)(i).

**(B) Distribution centers**

**(i) In general**

The term “retailer” includes a distribution center that is—

(I) owned or controlled by a person described in subparagraph (A), or owned or controlled cooperatively by a group of the persons, if the predominant retail business activity of the person is not floral sales; or

(II) independently owned but operated primarily to provide food products to retail stores.

**(ii) Importers and producers**

An independently owned distribution center described in clause (i)(II) that also is an importer or producer of cut flowers or cut greens shall be subject to the rules of construction specified in paragraph (4)(A)(iii) and, for the purpose of the rules of construction, be considered to be the seller of the articles directly to the consumer.

**(11) Secretary**

The term “Secretary” means the Secretary of Agriculture.

**(12) State**

The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau (until such time as the Compact of Free Association is ratified).

**(13) United States**

The term “United States” means the States collectively.

(Pub. L. 103–190, § 3, Dec. 14, 1993, 107 Stat. 2268.)

REFERENCES IN TEXT

For ratification of Compact of Free Association with the Republic of Palau, referred to in par. (12), see Proc. No. 6726, Sept. 27, 1994, 59 F.R. 49777, set out as a note under section 1931 of Title 48, Territories and Insular Possessions.

**§ 6803. Issuance of orders**

**(a) In general**

**(1) Issuance**

To effectuate the policy of this chapter specified in section 6801(b) of this title, the Secretary, subject to the procedures provided in subsection (b) of this section, shall issue orders under this chapter applicable to qualified handlers of cut flowers and cut greens.

**(2) Scope**

Any order shall be national in scope.

**(3) One order**

Not more than 1 order shall be in effect at any 1 time.

**(b) Procedures**

**(1) Proposal for an order**

**(A) Secretary**

The Secretary may propose the issuance of an order.

**(B) Other persons**

An industry group that represents a substantial number of the industry members who are to be assessed under the order, or any other person who will be affected by this chapter, may request the issuance of, and submit a proposal for, an order.

**(2) Publication of proposal**

The Secretary shall publish a proposed order and give notice and opportunity for public